



# UNITED STATES PATENT AND TRADEMARK OFFICE

S.M.

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,074	07/31/2000	RONALD G CRYSTAL	205965	5286
23460	7590	06/10/2004	EXAMINER	
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780			FALK, ANNE MARIE	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/629,074

**Applicant(s)**

CRYSTAL ET AL.

Examiner

Anne-Marie Falk, Ph.D.

Art Unit

1632

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

a)  The period for reply expires 3 months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.
3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 4, 9, 11, 12, 26, 27, 30, 32, 33, 38-43, 46, 47, 54, 55, 60, and 61.

Claim(s) rejected: 1-3, 6-8, 17-19, 21-23, 25, 29, 31, 44, 45, 48-53, 56-59 and 62.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_.

*Anne-Marie Falk*  
Anne-Marie Falk, Ph.D.  
Primary Examiner  
Art Unit: 1632

**Continuation of 2. NOTE:**

The proposed amendment raises new issues that would require further search and consideration. Claims 52, 58, and new Claims 63, 64, and 65 cover combinations not included in the prior claim set, which would require further search and consideration. For example, Claim 58, directed to a bone graft, now includes an exogenous nucleic acid encoding any VEGF in combination with a second nucleic acid encoding transforming growth factor  $\beta$ 1 (TGF- $\beta$ 1).

**Continuation of 5.** does NOT place the application in condition for allowance because:

The arguments presented are moot because they are directed to the claims as amended, but the amendment has not been entered for the reasons set forth above.

The rejections are maintained for reasons of record.